IN THE MATTER OF ARBITRATION BETWEEN

AMALGAMATED TRANSIT UNION LOCAL 1005	)	**ARBITRATION AWARD**
and	)	**ZAPATA WAGE GRIEVANCE**
METROPOLITAN COUNCIL	)	**BMS CASE NO. 06-PA-0990**

Arbitrator:	Stephen F. Befort
Hearing Date:	July 18, 2006
Date of decision:	August 9, 2006
	APPEARANCES
For the Union:	Roger A. Jensen
For the Employer:	Andrew D. Parker

INTRODUCTION

Amalgamated Transit Union Local 1005 (Union) is the exclusive representative of a unit of employees employed by the Metropolitan Council (Employer). The Union brings this grievance on behalf of Jeanne Zapata claiming that the Cleaner 3 job classification should be paid at a higher rate of compensation than that provided in the parties' collective bargaining agreement. The Employer maintains that the grievance is not arbitrable and, in any event, that the agreement's wage provision is controlling.

Because of the multiple issues presented, the hearing in this matter was bifurcated. On July 18, 2006, the parties presented testimony and argument on the arbitrability issue, and the Union also elicited testimony from the grievant as to the merits of the grievance. The hearing then was adjourned pending a decision on the arbitrability issue with the understanding that the record would be re-opened if the dispute was found to be arbitrable.

ISSUES

1) Is this dispute arbitrable?

2) Did the Employer violate the parties' collective bargaining agreement in compensating the Cleaner 3 job classification at a wage class 13 as opposed to at a wage class 17 level?

RELEVANT CONTRACT LANGUAGE

ARTICLE 1
GENERAL PROVISIONS

NONDISCRIMINATION

Section 2. Metro Transit and the ATU agree that they shall not discriminate against any individual with respect to hiring, promotion, discharge, compensation and other terms, conditions and privileges of employment, nor unlawfully deprive any individual of employment opportunities because of such individual's race, color, religion, sex, sexual orientation, national origin, age or disability. Accordingly, Metro Transit employees shall perform their duties and responsibilities in a non-discriminatory manner, consistent with this Article and the law. It is understood that nothing in this agreement prohibits an employee from the unlawful and timely pursuit of any remedy allowed by law.

ARTICLE 5
GRIEVANCE PROCEDURE

Section 3. Any dispute or controversy, between Metro Transit and an employee covered by this Agreement, or between Metro Transit and the ATU, regarding the application, interpretation or enforcement of any of the provisions of this Agreement, shall constitute a grievance.

ARTICLE 12
CONSISTENT WITH LAWS AND REGULATIONS

Nothing in this Agreement shall require Metro Transit to do anything inconsistent with the charters, franchises, indeterminate permits, or laws under which it or its subsidiaries may from time to time operate or exist, nor anything inconsistent with the orders or regulations of any competent governmental authority under any such laws.

ARTICLE 32
JOB CLASSIFICATIION AND WAGE RATES

Metro Transit will maintain the following job classifications and wage classes:

Department & Job	**Wage Class**
Clerk Stenographer	9
Operator	41
* * *	
Cleaners – 3rd year	13
* * *	

FACTUAL BACKGROUND

Arbitrability

The parties' collective bargaining agreement contains an express provision addressing compensation for the Cleaner 3 classification. Article 32 specifies that the Cleaner 3 job class is to be compensated at the wage class 13 rate. At present, that wage class earns $19.01/hour.

The Employer presented evidence concerning the parties' bargaining history. This evidence establishes that the past three contracts have provided that the Cleaner 3 classification be paid at the wage class 13 rate. This evidence also shows that the Union did not include a wage class change for this classification among its written bargaining

positions during any of the last three rounds of negotiations. The parties stipulated that the Union did make an oral proposal to change the Cleaner wage class during the recent 2005-06 round of bargaining. The Employer, however, rejected this request, and the parties executed the current agreement in January 2006 containing the wage class 13 provision with respect to the Cleaner 3 job class.

The Merits

The Union claims that the contract wage rate unfairly discriminates against the Cleaner 3 job class in violation of Article 1, Section 2 of the contract. Ms. Zapata, an incumbent of the Cleaner 3 job class, provided testimony describing the difficult job tasks performed by the cleaners. Ms. Zapata testified that she is expected to clean approximately 60 buses each night on her shift. This works involves substantial lifting and the disposal of many unpleasant items. She testified that this work puts considerable strain on her back and shoulders.

Ms. Zapata contends that the job tasks performed by the Cleaner 3 job class are more arduous than those performed by a number of other job classes paid at a higher wage rate. She maintains that several other job classes received wage class bumps in the current contract, ostensibly because of higher pay equity ratings that she claims are of questionable validity.

DISCUSSION AND OPINION

Arbitrability

The issue of arbitrability is a matter governed by the parties' collective bargaining agreement. While the Supreme Court has counseled that a finding of arbitrability generally is favored, the parties are free to withhold matters from arbitration by the terms

of their contractual arrangement. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

In this instance, the parties' contract defines an arbitrable grievance as "any dispute or controversy, between Metro Transit and an employee covered by this Agreement, or between Metro Transit and the ATU, regarding the application, interpretation or enforcement of any of the provisions of this Agreement." Based on this language, the Employer contends that Ms. Zapata's wage class complaint does not constitute an arbitrable grievance because it does not concern the "application, interpretation, or enforcement" of the terms of the agreement. Ms. Zapata is not claiming that the Employer has failed to pay the specified contract wage rate set out in Article 32 - a clearly arbitrable grievance - but instead is seeking to *alter* the specified contract wage rate.

On its face, the Employer's position appears to be correct. The role of a grievance arbitrator is to interpret contract language, not to make new contract terms. *See* United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). Indeed, the assumption of that latter task by a grievance arbitrator generally would be inconsistent with the exclusive representation and collective bargaining principles embodied in Minnesota's Public Employment Labor Relations Act, Minn. Stat. Ch. 179A.

The Union, however, counters with two arguments. First, the Union claims that this matter is arbitrable under the non-discrimination provision of Article 1, Section 2. In essence, the Union argues that the contract unfairly discriminates against the Cleaner 3 class by providing a lesser amount of compensation than that provided to other similarly-

situated employee groups. Second, the Union maintains that this matter should be deemed arbitrable because the parties' agreement does not contain the commonly used language stating that the arbitrator "shall have no power to add to, delete from, or modify" the contract language.

Neither of these arguments is persuasive. First of all, Article 1, Section 2 only bans discrimination on the basis of certain listed traits, namely "race, color, religion, sex, sexual orientation, national origin, age or disability." Membership in the Cleaner 3 classification is not among the traits listed, nor can it reasonably be seen as a proxy for any of those traits.

Second, the typical "no power to add to, delete from, or modify" language serves as a restriction on an arbitrator's interpretation of contract language, not his or her jurisdiction. As such, the absence of such language does not expand the reach of a grievance arbitrator's jurisdiction.

In the end, the general rule that an arbitrator's role is to read and apply the parties' contract controls this case. To go beyond that role to determine whether some new and different contract terms might be preferable would run afoul of the Supreme Court's admonition that an arbitrator is not to dispense his or her "own brand of industrial justice." United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960).

The Merits

Having determined that this matter is not arbitrable, I am without jurisdiction to consider the merits of Ms. Zapata's grievance. This does not mean that I either agree or disagree with her view as to the appropriate pay rate for the Cleaner 3 class. It simply

means that such a determination properly is a matter for the bargaining table rather than the grievance arbitration process.

AWARD

The grievance is denied.

August 9, 2006

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Stephen F. Befort
Arbitrator